

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 11, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP2203**

**Cir. Ct. No. 2014CV250**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**DR. RAMANANDA SHETTY,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DR. GANESH PULLA,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Kenosha County:  
DAVID M. BASTIANELLI, Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. Dr. Ganesh Pulla tore down a fence erected by his neighbor, Dr. Ramananda Shetty. Shetty sued Pulla seeking damages for destruction of the fence along with exemplary damages under WIS. STAT.

§ 895.446(3) (2013-14).<sup>1</sup> Shetty prevailed in the trial to the circuit court on his property damage claim. The court dismissed Pulla’s counterclaim for damage to his pool drain pipe and other damages under § 895.446. We conclude that the evidence was sufficient and affirm the judgment awarding Shetty damages under § 895.446(3)

¶2 WISCONSIN STAT. § 895.446 creates a civil remedy for damage to property including conduct that would also be deemed criminal damage to property under WIS. STAT. § 943.01. Section 943.01 bars intentionally damaging another’s property. The burden is on the party claiming the property damage to prove a violation of § 943.01 “by a preponderance of the credible evidence.” Sec. 895.466(2).<sup>2</sup>

¶3 After a court trial, the court made the following findings. In May 2013, relying upon a 1992 survey, Shetty procured a permit from the Village of Pleasant Prairie to erect a fence. The fence was erected in June. Pulla demanded that Shetty cease building the fence until legal issues could be resolved. The court found that Pulla’s demand was not clear on the question of whether Pulla was claiming that Shetty was erecting the fence on Pulla’s property. Shetty testified that he did not receive Pulla’s demand. Shetty procured a new survey of the property in July 2013, and that survey confirmed that Shetty’s new fence was located on his property. In August, Pulla demanded that Shetty remove the fence. Shetty testified that he did not receive this demand until the middle of September

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

<sup>2</sup> On appeal, Pulla does not dispute the award of treble damages under WIS. STAT. § 895.446(3)(c).

when he returned from abroad. When he returned to his property, Shetty found that Pulla had torn down the fence and piled the pieces in Shetty's yard.

¶4 With regard to his counterclaim for property damage, Pulla testified that his pool drainage pipe was cut when the fence was erected. However, Pulla offered no evidence about the cost of repairing the pipe. Shetty testified that the fence workers encountered the pipe, but, believing it was an old pipe, cut and removed portions of the pipe to erect the fence. There was no evidence that Shetty directed or requested any activity relating to the pipe or knew at the time that the workers had decided to cut and remove portions of the pipe. The court concluded that Pulla did not meet his burden to show that Shetty intentionally damaged his property.

¶5 The circuit court concluded that Shetty met his burden to show that Pulla was aware that Shetty owned the fence and Pulla intentionally removed and destroyed the fence. In so concluding, the court considered the evidence in light of the elements of criminal damage to property, WIS JI—CRIMINAL 1400: Pulla intentionally caused damage to property belonging to Shetty without Shetty's consent and with the knowledge that the property belonged to Shetty and that Shetty did not consent to the damage.

¶6 The court also addressed the location of the fence. Each party presented testimony from a surveyor. The court found that Shetty's surveyor was more credible than Pulla's surveyor, and that Pulla's surveyor used a flawed survey technique that relied upon misplaced boundary monuments. Shetty's surveyor testified that based on his survey, the fence was located on Shetty's property. The court found that Shetty's fence and Pulla's damaged pool drainage pipe were both on Shetty's property.

¶7 Because Pulla did not meet his burden of proof, the court dismissed his property damage counterclaim. Because Shetty met his burden of proof, the court awarded Shetty damages.<sup>3</sup>

¶8 On appeal, Pulla challenges the sufficiency of the evidence that he knew the fence belonged to Shetty and that Shetty did not consent to having his fence damaged. Pulla procured a survey before he had the fence removed. The survey revealed that portions of the fence were on Pulla's property.<sup>4</sup> Therefore, Pulla argues that he made an honest mistake of fact and law when he hired workers to remove the fence he believed was on his property. Pulla further believed that portions of the allegedly encroaching fence belonged to him, which permitted him to remove those encroaching portions.

¶9 We accept the findings of fact made by a circuit court sitting as the trier of fact unless those findings are clearly erroneous. WIS. STAT. § 805.17(2). The circuit court assesses the credibility of the witnesses, weighs the evidence, and draws inferences from the evidence. *Rivera v. Eisenberg*, 95 Wis. 2d 384, 388, 290 N.W.2d 539 (Ct. App. 1980).

¶10 At trial, Pulla admitted that he knew the fence belonged to Shetty. Even if Pulla relied upon his surveyor in deciding to remove the fence, that survey only showed that portions of the fence, not the entire fence, encroached upon Pulla's property.<sup>5</sup> While Pulla claims he acted mistakenly because he believed

---

<sup>3</sup> Pulla does not contest the calculation of the damages.

<sup>4</sup> At trial, the court deemed Pulla's surveyor's opinion regarding the property boundary not credible and accepted the opinion of Shetty's surveyor that Shetty's fence was entirely on Shetty's property.

<sup>5</sup> The legal significance of this information, if any, is not before us.

that the fence was on his property, the circuit court was not required to accept Pulla's characterization of his state of mind or his conduct, particularly in light of the fact that Pulla's own surveyor indicated that only part of the fence encroached on Pulla's property.<sup>6</sup>

¶11 The court's finding that Pulla knew the fence belonged to Shetty and that Pulla intentionally removed and destroyed the fence are not clearly erroneous based on this record. The court's determination that Pulla did not prove his property damage counterclaim is also supported by the record before us.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

---

<sup>6</sup> Pulla argues that because portions of the fence were on his property, he had a right to claim those portions and exercise control over them. We need not address this argument because we have affirmed the circuit court's finding that the fence was entirely on Shetty's property.

